

1           A     That was it.

2           Q     -- you didn't contact Mr. Hoover at that time to ask  
3 him what his fees were, did you?

4           A     At which time, sir?

5           Q     At the time that you assumed that his fees for the  
6 channel studies had been included in the figure that David  
7 Gardner gave you?

8           A     You mean around the November 7, 1991 letter?

9           Q     Yes.

10          A     No, I did not contact him at that time.

11          Q     Instead you just divided the total figure that you  
12 had been given by three? Isn't that right?

13          A     That's correct.

14          Q     At the time you made the Red Lion allocation you  
15 knew from working with Mr. Hoover that the channel studies he  
16 had conducted involved six locations rather than three?  
17 Correct?

18          A     Yes, three of them weren't filed on, so they were  
19 irrelevant.

20          Q     At the time you made the Red Lion allocation you  
21 didn't have any information about the amount of Mr. Hoover's  
22 fees for the channel studies, did you?

23          A     I don't know if I recall that. I don't think -- I  
24 don't recall that I recall the specific amount for each  
25 channel study at the time.

1 Q Could you repeat your answer?

2 A Yeah. I'm saying at the time that I did my November  
3 7, '91 calculation and when I did my apportionment I knew  
4 there was a fixed fee for Hoover factored in. At least I  
5 thought there was a fixed fee, the initial fixed fee, for  
6 Hoover factored in there, but I don't know that I recall at  
7 that time the specific amount of Hoover's fixed fee which we  
8 subsequently learned was \$1,000 per location.

9 Q And you didn't have any information about the amount  
10 of those fees at the time you drafted your November 7th  
11 letter, did you?

12 A You mean the initial fixed fee allocation study of  
13 Hoover?

14 Q Correct.

15 A I did not have that, no.

16 Q Now, I take it --

17 A I didn't have the precise dollar amount, no.

18 Q I take it that you didn't have any information about  
19 the amount of those fees at the time you went on vacation in  
20 December of 1991? Is that right?

21 A That's right.

22 Q Now, aside from the channel studies, you claim that  
23 a second reason why the -- why you allocated one-third of the  
24 engineering fees to the Red Lion CP was because you were aware  
25 at the time of the allocation that the engineering portions of

1 the two applications for the Lancaster and Lebanon stations  
2 involved less work per application than the engineering  
3 portion of the Red Lion application?

4 A That's correct.

5 Q Is that a correct assumption?

6 A That's correct.

7 Q I'm curious to know how it was that you arrived at  
8 the conclusion that more work would be necessary for the  
9 single Red Lion application as opposed to the other two  
10 applications that were prepared each for Lancaster and  
11 Lebanon. You're not qualified as an engineer, are you?

12 A No, but I've worked with engineers for, for many  
13 engineers in the practice of law and I was aware of the, the  
14 channel studies and the preparation of the applications. See,  
15 on the Lancaster and Lebanon each one of those was just the  
16 same site and under the low power rules you can file as many  
17 applications as you want per site, and what Raystay did is  
18 they filed two applications for Lancaster from the exact same  
19 site and they filed two applications for Lebanon from the  
20 exact same site. So in my way of thinking in terms of the  
21 engineering work it was one-third for the Red Lion site, one-  
22 third for the Lebanon site and one-third for the Lancaster  
23 site and that was the basis for my allocation. As it turns  
24 out, if I'd known about the \$3,000, I could have allocated  
25 more to the Red Lion than I did. I underallocated, if

1 anything.

2 Q And you reviewed the engineering materials that had  
3 been prepared by Mr. Hoover for the Lancaster and Lebanon, as  
4 well as the Red Lion applications at the time you prepared  
5 your November 7th letter? Isn't that right?

6 A Yeah. I reviewed it briefly, yeah. I didn't study  
7 it in detail, but I reviewed it briefly.

8 Q Now, based on your years of experience as a  
9 communications attorney, you were aware at the time you made  
10 the Red Lion expense allocation, were you not, that once an  
11 available channel and transmitter site had been identified  
12 it's necessary for a new channel study to be conducted in  
13 order to make sure that the channel will meet the FCC's  
14 minimum spacing requirements from the site at which it's  
15 proposed? Correct?

16 A I don't think that's correct. As I recall,  
17 whoever's analysis -- he said in Lancaster you can file for a  
18 -- he gave us various options of channels.

19 Q Well, Mr. --

20 A -- in Lebanon. I mean, I think he did that in one  
21 report, Mr. Holt.

22 Q I'm sorry.

23 A I mean for each site. He gave us a report for each  
24 site and he said these are the channels available. Now, there  
25 might have been some interplay there, but he said these are

1 the channels that are available.

2 Q Well, during the initial channel study that he  
3 conducted and which you have referred to, he used a random  
4 site located in downtown Lebanon and downtown Lancaster in  
5 order to determine what channels were available? Correct?

6 A Yeah. He needed a point of reference and that's  
7 before specific sites had been pinned down for Lebanon and  
8 Lancaster.

9 Q So a new channel study was necessary once the  
10 specific site had been pinned down to determine whether each  
11 of the channels would work at the proposed site? Correct?

12 A I don't know that that's correct. If -- in low  
13 power there's a lot of flexibility and if the coordinates of  
14 the site -- I haven't compared them, but if the coordinates of  
15 the site that we actually landed on in Lebanon and Lancaster  
16 were reasonably near the reference point site that Mr. Hoover  
17 had assumed in his frequency search for Lebanon and Lancaster,  
18 I don't know of any need to do anything more. I'm not that  
19 conversive in engineering, but I don't recall any additional  
20 site searches or site studies. We provided you what we --  
21 what -- with what we were provided.

22 Q You're also aware from your practice of  
23 communications law that two different stations operating from  
24 the same site can have two different antenna patterns? Isn't  
25 that right?

1           A     I believe that's correct.

2           Q     And you also aware, were you not, that different  
3 stations operating from the same site can have different  
4 signal orientations? Isn't that true?

5           A     Yes.

6           Q     Let me direct your attention to the orientation map  
7 shown on page 25 of TBF Exhibit 203 which is the Lancaster  
8 Channel 23 application.

9           A     I'm sorry. Which exhibit? 203?

10          Q     Yeah, 20 -- TBF Exhibit 203. It's been admitted  
11 into evidence in the previous proceeding. I'm directing you  
12 to page 25 of that and if you would also turn -- keep your  
13 finger on page 24 of Exhibit TBF -- of TBF Exhibit 204 which  
14 is the Lancaster Channel 31 application.

15          A     Which -- what was that other reference?

16          Q     That was page 24 of TBF Exhibit 204.

17          A     What page, sir?

18          Q     24 of 204, 25 of 203.

19          A     Yes, I have it.

20          Q     Now, it's apparent from the face of the maps that  
21 you currently have before you that the intent as specified in  
22 the two Lancaster applications were oriented in two different  
23 -- two completely different directions? Isn't that right?

24          A     That appears to be the case.

25          Q     And you will agree with me, will you not, the

1 different antenna orientations were also noted in Sections B  
2 and C of the engineering statements that Mr. Hoover submitted  
3 in support of each of those applications, and you can refer to  
4 pages 14 of TBF 203, 14 and 15 with page 14 and 15 of TBF  
5 204?

6 A Well, whatever they show. I assume that's the case.

7 Q I think that you'll also agree with me if you  
8 reviewed the applications that the information provided in  
9 response to the FCC's question in the FCC form also shows that  
10 the antennas were oriented in two different directions. Would  
11 you care to make that comparison?

12 A I'm not disputing that, Mr. Holt.

13 Q Okay.

14 MR. BECHTEL: In the same, in the same exhibit three  
15 different places.

16 BY MR. HOLT:

17 Q Isn't it true that Mr. Hoover would have had to have  
18 conducted two different contour determination studies at the  
19 time he prepared the engineering portions for Lancaster  
20 applications in view of the fact that they were proposing two  
21 different antenna orientations?

22 A I, I don't think so, but I'm not really sure.

23 Q And isn't it also true that after completing those  
24 studies Mr. Hoover would have had to have prepared two  
25 different maps showing the different antenna orientations?

1 Indeed, those maps are reflected in --

2 Q We've provided whatever Mr. Hoover deemed was  
3 necessary for these filings.

4 JUDGE CHACHKIN: Are we dealing with whether Mr.  
5 Hoover did his work professionally or we're dealing with the  
6 work he actually did?

7 MR. HOLT: We're dealing with the work he actually  
8 did, Your Honor.

9 JUDGE CHACHKIN: Well, does the work he actually did  
10 show that he did these things that you claim he should have  
11 done?

12 MR. HOLT: Yes, it does, Your Honor.

13 JUDGE CHACHKIN: It does?

14 MR. HOLT: And that's -- yes, it does, Your Honor.

15 JUDGE CHACHKIN: Well, apparently there was only one  
16 allocation study prepared.

17 MR. HOLT: When there was an original study to  
18 determine whether any channels would fit into Lebanon,  
19 Lancaster and Red Lion, yes, but then later at the time that  
20 the applications were actually prepared Mr. Hoover had to  
21 perform different work on the Lancaster applications. There  
22 were two each, the Lancaster and Lebanon, and what I'm  
23 establishing is that Mr. Hoover had to perform different work  
24 for each of those applications because there were different  
25 antenna orientations.

1 JUDGE CHACHKIN: Well, do we have studies showing he  
2 did prepare this additional work --

3 MR. HOLT: Well --

4 JUDGE CHACHKIN: -- that he was paid for, that he  
5 asked for expenses?

6 MR. HOLT: What we have, Your Honor, is a copy of  
7 the application and --

8 JUDGE CHACHKIN: We have his invoices.

9 MR. HOLT: I don't -- we have not received any other  
10 materials from Mr., from Mr. Hoover reflecting these studies.

11 JUDGE CHACHKIN: Well, what you're claiming is that  
12 he should have had prior expenses and be able to allocate more  
13 money. That's what it seems that you're saying. That \$7,000  
14 somehow is --

15 MR. HOLT: No, Your Honor. What I'm saying is --

16 JUDGE CHACHKIN: It understates the -- Mr. Hoover's  
17 expenses.

18 MR. HOLT: No. No, Your Honor. Respectfully, what  
19 I'm stating is that Mr. Hoover's fees for performing the work  
20 that he performed in the preparation of the applications,  
21 which were \$1,500 for each application less a certain  
22 discount, included different types of work that would have  
23 been necessary for the different applications. And Mr.  
24 Berfield has proposed that there was very little work  
25 necessary to perform -- to prepare the two Lancaster

1 applications vis-a-vis each other, that once you prepared one  
2 the other one was the same, and I'm establishing that that's  
3 not the case.

4 MR. BECHTEL: If it please the Court, let's look at  
5 what Mr. Berfield said. We're at the bottom of page 10 of his  
6 written testimony, paragraph 21, subparagraph (a). "I was  
7 aware that the engineering portions of two applications for  
8 the same site, i.e., two applications each for Lebanon and  
9 Lancaster, involved less work per application than the  
10 engineering portions of applications for entirely different  
11 sites," and that's all he said. He didn't say they were about  
12 the same. He didn't say they were -- almost no work or very  
13 little work that was required for the second application. He  
14 said they involved less work. And I think if you look at the  
15 -- compare these applications all the way through, you will  
16 see that there is a lot of duplication of the engineering  
17 materials in various exhibits, various paragraphs, various  
18 sections and so on. Obviously there are some differences. So  
19 that was an inaccurate analysis of the thrust of Mr.  
20 Berfield's testimony on this point.

21 MR. HOLT: Your Honor, I think that the -- my  
22 questions are seeking to establish that there were actually  
23 five different applications that were prepared and that Mr.  
24 Hoover charged accordingly, according to the amount of work  
25 that he did for each application, and that there was a

1 significant difference in the amount of work that was  
2 necessary to produce each of those applications.

3 JUDGE CHACHKIN: Well, we'll take a luncheon recess.

4 (Whereupon, a lunch recess was taken from 12:33 p.m.  
5 until 1:31 p.m.)

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A F T E R N O O N   S E S S I O N

JUDGE CHACHKIN: Back on the record. Mr. Holt?

BY MR. HOLT:

Q Mr. Berfield, before we left off at the break, Mr. Bechtel directed your -- to a portion of your testimony which I'm trying to understand and it's found in paragraph 21, I believe, on page 10 which discusses what your thoughts were when you made the one-third allocation of Mr. Hoover's engineering fees. And the way I understand it is what you're saying is that if there were three applications, one each for Red Lion, Lancaster and Lebanon, and -- those applications could generally be expected to be the same price, is that correct, the preparation of those applications by Mr. Hoover?

A No. What I'm saying in this context, there were three sites.

Q All right.

A That at two of the sites each site had two applications. And I'm saying I apportioned it on a site basis because that's how we started out on the project with the site study and there were a lot of similarities between the two Lancasters and between the two Lebanons and I did it on a site basis. That's what I intended to say.

Q So -- now, assuming that -- from a base that there are one -- there was one application for each location, those applications would have been relatively the same cost?

1 Correct?

2 A Well, I don't -- I wasn't dealing in hypotheticals,  
3 Mr. Holt. I was dealing with what I had before me.

4 Q Well, what you're saying is that there was an --  
5 that the incremental cost of preparing the second Lancaster  
6 application and the second Lebanon application was relatively  
7 small? Correct? There wasn't much difference between the  
8 first application that was prepared by Mr. Hoover and the  
9 second application because they were located at the same site?

10 A Well, in part I was saying that overall it was one-  
11 third, one-third, one-third. I thought it was appropriate  
12 because of the way we started out with the engineering work  
13 that was done. That's correct.

14 Q Because you believed that there was a -- that small  
15 incremental cost between the first application for Lancaster  
16 that was prepared and the second application?

17 A Because they had a great many similarities. That's  
18 correct.

19 Q Well, wouldn't -- if you added the two Lancaster  
20 applications together and the two Lebanon applications  
21 together, wouldn't those -- the work that was performed on  
22 those two applications have exceeded the amount of work that  
23 was necessary to perform the Red Lion application?

24 A You mean two sites versus one site?

25 Q Correct. Well, I'm saying you set the same sites.

1 If you begin from a baseline that there are three applications  
2 and then -- your testimony, I understand it, is that there was  
3 a small incremental cost to prepare the second of the  
4 Lancaster applications and the second of the Lebanon  
5 applications. My question to you is if you added those second  
6 applications in wouldn't those have increased the cost of the  
7 Lebanon and Lancaster applications vis-a-vis the Red Lion  
8 application?

9 A Not appreciably, not in my view.

10 Q It would have increased it somewhat? Correct?

11 A I don't -- to me, I looked at it as three sites. I  
12 knew the engineering work that had been done from the start.  
13 I knew some of the follow-up engineering work that had been  
14 done on the FAA where there was a lot of additional FAA work  
15 that had to be done on Red Lion because Red Lion was the first  
16 one and there was an EMI problem and Mr. Hoover had to do a  
17 lot of additional work for Red Lion, and I looked at all that  
18 and I said one-third, one-third, one-third and I didn't parse  
19 it into these fine particularities that you're presupposing in  
20 your question.

21 Q Well, I'm not trying to parse it into fine  
22 particularities. You knew that there were five applications?  
23 Correct?

24 A Of course.

25 Q And you knew that the Lancaster application and the

1 Lebanon applications combined would require more work than the  
2 Red Lion application, didn't you?

3 A Not necessarily because the Red Lion had a lot more  
4 FAA work than either of the others.

5 Q Well, there was FAA work required for the Lancaster  
6 and Lebanon stations, was there not? I believe it's reflected  
7 in your testimony, isn't it?

8 A Yeah, but it's also reflected in the document if  
9 you'll, if you'll review them that Red Lion came up first and  
10 that to satisfy the FAA on Red Lion Mr. Hoover had to do  
11 substantial additional work.

12 Q Was Mr. -- did you receive any additional bills from  
13 Mr. Hoover for that work?

14 A I never received any bills from Mr. Hoover.

15 Q Did -- to your knowledge did anyone from Raystay  
16 receive any additional bills from Mr. Hoover for that work?

17 A No, but I'm just saying that at the time I made my  
18 one-third, one-third allocation I knew about the fixed fee  
19 from the start. I knew about the preparation of the  
20 application. I knew about the additional work for Red Lion  
21 for the EMI and I thought it all balanced out one-third, one-  
22 third, one-third.

23 Q Did you have any understanding at that time as to  
24 whether or not Mr. Hoover had billed for the work that he had  
25 done in connection with the FAA work that you said that was

1 necessary for the Red Lion permit?

2       A     My understanding is I had been given a figure from  
3 Mr. David Gardner for what Mr. Hoover's engineering was and at  
4 the time I wrote my November 7th letter and then my allocation  
5 I assumed that \$7,275, whatever it is, included all this work.  
6 I later found out that it did include this work, but it  
7 included \$3,000 initial work, \$1,000 for Red Lion, \$1,000 for  
8 Lebanon, \$1,000 for Lancaster.

9       Q     So you had no knowledge then as to whether or not  
10 Mr. Hoover had charged any additional fee for the Red Lion FAA  
11 work that --

12       A     My, my assumption was that when, that when Mr.  
13 Gardner gave me the engineering fees that it included all of  
14 Mr. Hoover's engineering work. That was my assumption. Now,  
15 it turns out that assumption was not correct and that there  
16 was -- there had been an additional \$3,000 earlier and if I  
17 had known about that at the time my November 7, 1991 letter  
18 would have been \$3,000 more and my allocation would have been  
19 \$2,525 instead of \$2,425. If anything, I under-allocated \$100  
20 by not knowing about the \$3,000.

21       Q     Would you turn to paragraph 7 of your testimony? I  
22 believe it states that in the preparation of your November 7th  
23 letter you included in the calculation for legal fees a  
24 portion of legal fees and expenses that had been incurred in  
25 relation to the establishment of a compliance program for TV

1 40 in the low power construction permits of which the Red Lion  
2 construction permit was one? Correct?

3 A Correct.

4 Q Now, if you'd turn to page 22 of your testimony  
5 which is an invoice dated November 9, 1990 --

6 A Page 22?

7 Q Yes.

8 A Yes, sir.

9 Q Now, your tabulation indicates that you took 50  
10 percent of the fees reflected --

11 MR. HOLT: I dropped the microphone here, Your  
12 Honor.

13 BY MR. HOLT:

14 Q I believe your tabulation reflects that you said 50  
15 percent of the fees and 50 percent of the expenses reflected  
16 in this invoice when you made your calculations in preparation  
17 of the November 7th letter? Is that right?

18 A That's correct.

19 Q And I presume that since the second entry reflected  
20 in this invoice refers specifically to the Dillsburg station  
21 you didn't include work performed in connection with those  
22 services in your calculations. Am I right.

23 Q Well, that's not entirely correct. We have been  
24 required by the -- or Raystay had been required by the  
25 conditions in the Adwave -- in order to get a grant one of the

1 conditions of the grant for any additional stations for Mr.  
2 Gardner was not only to show good character and that he'd been  
3 complying with the Commission's rules, but also to -- that I  
4 think the language was something like meaningful steps to  
5 assure that any future stations the Commission might grant him  
6 would be operated properly. And when we had our -- our Red  
7 Lion, Lebanon, Lancaster construction permits were pending the  
8 Adwave decision came out. In order to get those five permits  
9 granted we had to make such a showing. We made the showing in  
10 part by our showing of good character, but the staff said --  
11 the processing staff said they were low power. The Mass Media  
12 Bureau said well, in addition you've got to come up with a  
13 program to show that you'll adhere to the Commission's rules,  
14 so that was the outgrowth of the compliance program. In other  
15 words, we had to set up the compliance program in order to  
16 obtain grant of our permits. Now, the compliance program  
17 applied to the existing station, TV 40, but it was also to  
18 serve as the prototype as to format and to apply to the five  
19 permit stations when they were built, so that we then got the  
20 application granted -- these applications granted and this was  
21 the follow-up on the establishment and implementation of the  
22 operational compliance program. So it seemed reasonable and  
23 fair to me to take half of this number, \$750, and apportion it  
24 to the construction permit, and the other half would have been  
25 excluded from my calculations as relating to, to TV 40. I

1 mean, that's the background of it.

2 Q Okay. Now, this invoice was issued after the grant  
3 of the construction permits, was it not?

4 A That's correct.

5 Q Okay. Now, which portion of the invoice -- when you  
6 look at these entries, which portion did you exclude from your  
7 calculation? Do you know?

8 A I just took -- I didn't parse it that finely, Mr.  
9 Holt. I just took the \$1,500 fulfilling a pledge that we'd  
10 made to the Commission in the context of getting the low power  
11 construction permits granted. We were following through on  
12 that pledge. It was also -- the establishment and the first  
13 go-through on the compliance program was to serve as a  
14 prototype for the five CPs, so I thought that at least 50  
15 percent of it should be attributable to the CPs and at least  
16 -- and I left 50 percent outside which would have been -- but  
17 I didn't parse each individual item here.

18 Q You made no review of any time diaries to determine  
19 whether any of the work related specifically to TV 40?

20 A Well, I looked, I looked at the, I looked at the  
21 time sheets and while, while the work may have in part applied  
22 to TV 40, it also applied to the setting forth for the CPs  
23 that were, that were to come, and it was also a fulfillment of  
24 a pledge that the Commission had made. When the Commission  
25 granted our five CPs the letter from Roy Stewart specifically

1 | referenced setting forth of the compliance program, so in a  
2 | way you could look at it that the grant of our CP were in --  
3 | almost in effect conditioned on fulfilling the compliance  
4 | program and that -- that's what -- that's why I took half of  
5 | it.

6 |       Q     Well, wouldn't that work have been necessary with  
7 | respect to TV 40 regardless of whether the construction  
8 | permits were ever built or operated?

9 |       A     Well, if the work arose in the context of getting  
10 | the CPs granted that's --

11 |       Q     Well, before the grant of the CPs? Correct? Now,  
12 | I'm talking about the period after the grant of the CPs. You  
13 | had made a representation before the CPs were granted that you  
14 | would do this and my question is --

15 |       A     And we had started it and this was the follow-  
16 | through and the completion of it, so it was part and parcel of  
17 | what we had told the Commission while the CP applications were  
18 | granted -- were pending. This is, this is the follow-through  
19 | and completion of it.

20 |       Q     My question to you is wouldn't that follow-through  
21 | and completion have been necessary with respect to TB 40  
22 | regardless of whether the construction permits were ever built  
23 | or operated?

24 |       A     No, not necessarily because it only -- it not only  
25 | had a function of, of not allowing us to obtain grant of the

1 low power permits, but we had to set up this operational  
2 program which would apply to the permits when built so it was  
3 like a prototype for the permits, to be followed by the  
4 permits when built, so it had that aspect -- so it had, it had  
5 a double justification in my mind.

6 Q What component of the compliance program that you  
7 established for TV 40 was established with the thought of the  
8 construction permits? I mean, was there any additional work  
9 necessary to establish the, the compliance program at that  
10 time in view of the thought that you might build the  
11 construction permits in the future?

12 A No.

13 Q Or was it simply a compliance program that was to  
14 apply to all stations regardless of --

15 MR. BECHTEL: Objection. There was three questions  
16 there. Why don't you pick one and ask it?

17 MR. HOLT: Are you directing me or the judge?

18 MR. BECHTEL: I am objecting to the form of the  
19 question. There's three questions. I'm suggesting that  
20 counsel might ask them one at a time.

21 BY MR. HOLT:

22 Q Mr. Berfield, what component of the compliance  
23 program that you established for TV 40 required additional  
24 work in view of the fact that you were constructing --  
25 planning to construct and operate the CPs? Do you understand

1 my question?

2 A Well, I don't know that I can --

3 Q Well --

4 A -- that I can answer it, but can I just state what  
5 my understanding was --

6 Q Sure.

7 A -- what my feeling was?

8 Q Sure.

9 A A compliance program was set up by the lawyers in  
10 our office and the compliance program was conceptional and  
11 there was, I gather, considerable thought as to what -- how it  
12 would be organized, what is a compliance program, how we  
13 organize it in the context of a low power station, what would  
14 go in, what would go out, what would be audited by us, what  
15 kind of records would be supplied by the people at Raystay,  
16 how it would work and also some aspect of training the Raystay  
17 people. In other words, the Raystay people who were operating  
18 TB 40 would also be operating the new stations when built, so  
19 there was also a training aspect regarding the permits with  
20 regard to personnel. So it was the concept, personnel and  
21 implementation and I don't think I can break it down anymore  
22 than that.

23 Q So you can't identify then any specific work that  
24 would have been required for the construction permits that  
25 wasn't required for establishing the program for TB 40?

1           A     In my view it was all required for the construction  
2 permits because we told the Commission we were going to have a  
3 compliance program. In other words, if we've not had TV 40  
4 then we would have had to establish this.

5           Q     But you did have TV 40, did you not?

6           A     Yes.

7           Q     And you would have had to have followed through with  
8 the promise with respect to TV 40 regardless of whether the  
9 construction permits were ever built? Right?

10          A     No. Well, well, we would have had to have followed  
11 through with it, yes, but I mean there was an aspect -- as I  
12 say, it was a prototype for the CPs and it was a follow-  
13 through on the pledge that we'd made to the Commission. I  
14 think if you make a pledge to the Commission and based on that  
15 pledge you get a CP granted and you go forward to complete the  
16 pledge that's then part and parcel of getting your CPs  
17 granted.

18          Q     And you viewed --

19          A     That was part of the justification. The other part  
20 of the justification for including half of it was a -- that it  
21 was a prototype, a training, for the, for the permits that  
22 were to be built.

23          Q     And you viewed it as an aspect of constructing or  
24 operating the low power construction permits?

25          A     Within the rule of steps reasonably necessary of

1 placing the station in operation, yes.

2 Q Did you discuss during your review of the invoices  
3 in preparation of your November 7th letter this invoice with  
4 Mr. Cohen to determine what portion of the legal fees related  
5 to the construction and operation of the low power stations?

6 A Well, first of all, I just -- I reviewed the time  
7 sheets. I discussed the statement with Mr. Cohen and he told  
8 me what was involved, and then based on that I made my  
9 allocation.

10 Q And he confirmed to you that a -- that the  
11 preparation of the letter dated August 8th and the other  
12 entries reflected in here related to the construction and  
13 operation of the low power stations?

14 A Well, Mr. Holt, I think you're going back over  
15 something that I've answered before in the sense that it -- to  
16 the extent that you established a compliance program and you  
17 have an existing station, but you're also going to apply it to  
18 new stations that were built. It applies to both.

19 Q But you were --

20 A And I can't -- I don't think it's appropriate to try  
21 to pin me down to say it was one or the other. I've tried to  
22 explain to you it was both.

23 Q Well, I'm asking you whether you -- whether during  
24 your conversations with Mr. Berfield that he confirmed to you  
25 that -- I'm sorry, with Mr. Cohen that he confirmed to you

1 that the preparation of this letter and the other entries  
2 related to the compliance program were related to the  
3 construction and operation of the low power stations?

4 A Oh, yes, we discussed that. I mean, that was right  
5 in our amendment from the very first which I reviewed that  
6 said we are going to establish a compliance program. It would  
7 apply to TV 40. It will apply to the permits when built. I  
8 mean, that was right in our amendment. I knew that.

9 Q Did you make any review of the letter that's  
10 reflected in this first entry to determine whether any  
11 component of it related to the construction permits?

12 A I probably, I probably looked at it, yeah.

13 Q Do you recall discussing the letter with Mr. Cohen?

14 A I don't recall any extended discussion, no.

15 Q You had some discussion in which he confirmed that  
16 it related to the operation or construction of the low power  
17 permit? Is that right?

18 A Well, I was -- I had reviewed the paper and I was  
19 just trying -- and I reviewed the amendments, and I just --  
20 and I had the time sheets, and I just discussed with Mr. Cohen  
21 the general -- just to confirm the general concept because he,  
22 he and Mr. Schauble had devised the compliance program and I  
23 was in the office. I knew generally what was going on, but I  
24 just refreshed myself in a general discussion with Mr. Cohen.  
25 That's exactly what it was.